



Office of the Mayor

NEWS RELEASE

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Bankruptcy debtor must maintain property, court says

The City of South Bend has won a major court ruling that gives teeth to its efforts to require real-estate owners in bankruptcy proceedings to adequately maintain their properties.

The ruling Tuesday (March 27, 2007) by Judge Harry C. Dees Jr. of the U.S. Bankruptcy Court for the District of Northern Indiana determined that property owners cannot avoid the obligations of maintaining their properties while in chapter 7 bankruptcy proceedings. In addition, the owner continues to have the same property maintenance obligations after the bankruptcy as long as the debtor owns the property.

Dees also ruled that debtors cannot push those obligations onto a lender holding the mortgage lien, if the lender does not foreclose on the property.

And fines imposed for code ordinance violations are not subject to the usual stay on fees imposed during bankruptcy because they were the costs of reimbursing the city for clean up or safety repairs, the court said.

“A clean city is everyone’s responsibility,” said Mayor Stephen J. Luecke, who said the ruling is critical to the city’s efforts to address vacant and abandoned properties. “As the City aggressively attacks the problems of vacant and abandoned properties, this decision will help us keep the pressure on owners who attempt to avoid their obligations to keep their own properties safe, secure and clean.”

“The problem of people seeking bankruptcy protection and abandoning properties

without anyone taking responsibility for the properties has created an enormous problem for many years,” said Ann-Carol Nash, assistant city attorney who represented the City in the case. “This decision by Judge Dees should help us considerably.”

The case arose from the city’s efforts to enforce property-maintenance standards at a west-side investment property owned by Ginger Kay Phillips.

In August 2005 when Phillips filed her chapter 7 bankruptcy petition, she owned three investment properties in South Bend. The case against the City involved her property at 703 N. Johnson St. The city’s Department of Code Enforcement had issued numerous citations on the property as a public nuisance. On three occasions, Phillips was ordered to make required repairs and clean up the property, facing a potential \$5,000 penalty.

Phillips’ lack of maintenance on her property affected “the surrounding neighborhood and the city as a whole,” according to Catherine M. Toppel, director of code enforcement. “If this blight is allowed in all cases where a property owner [files bankruptcy], the city will be without recourse to protect the public health, safety and welfare.”

Phillips’ attorney contended that in August 2005 she had surrendered her responsibility to the creditor, Citifinancial Mortgage, which held the mortgage lien. Phillips filed the case against the city in May 2006, saying that attempts by Code Enforcement to enforce property maintenance standards violated her bankruptcy rights.

The city’s actions, however, “were a legitimate exercise of its police or regulatory power and were consistent with its duty to protect its residents,” the court said.

“The primary purpose of the law being enforced was one of public health, safety and welfare, and was not ... to protect [the City of South Bend’s] status as a creditor,” the court said. “Phillips continues to be the owner of the property, with all the rights and obligations.”

The case is Ginger Kay Phillips vs. City of South Bend, case number 05-34260HCD, which was filed July 27, 2006.